

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KEVIN A. POGUE,)	
)	
Plaintiff,)	
)	
v.)	No. 4:11CV2028 TIA
)	
STATE OF MISSOURI,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's motion to proceed in forma pauperis. Upon consideration of the financial affidavit, the Court has determined that plaintiff is unable to pay any portion of the filing fee. As a result, the motion will be granted.

Additionally, the Court has conducted an initial review of the complaint and finds that it is unclear whether plaintiff intended for this action to be filed as a civil action under 42 U.S.C. § 1983 or as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Although plaintiff drafted the complaint on the Court's civil complaint form, he alleges that he was denied his right to due process in a civil commitment trial. And he requests release from confinement, which relief is available only through the writ of habeas corpus. Thus, it appears that plaintiff is seeking habeas relief.

The Court will direct plaintiff to inform the Court whether he intends for this action to be brought under 42 U.S.C. § 1983 or 28 U.S.C. § 2254. Within thirty days

of the date of this Order, plaintiff must file a short written statement specifying under what authority this case has been brought. Furthermore, if plaintiff intends for this action to be brought under § 2254, he must fill out and return a § 2254 form. The Court will provide the form to plaintiff.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis [Doc. 2] is **GRANTED**.

IT IS FURTHER ORDERED that, within thirty (30) days of the date of this Order, plaintiff shall file a short written statement specifying whether he is bringing this action under 42 U.S.C. § 1983 or 28 U.S.C. § 2254.

IT IS FURTHER ORDERED that the Clerk shall mail to plaintiff a form petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

IT IS FURTHER ORDERED that if plaintiff intends to convert this action into a petition for writ of habeas corpus, he must complete the form and return it to the Court within thirty (30) days of the date of this Order.

Dated this 29th day of November, 2011.

/s/ Terry I. Adelman
UNITED STATES MAGISTRATE JUDGE